АНАЛИЗ
МИРОВОГО ОПЫТА

*Thomas D. Hopkins**

U.S. Regulation in Context

JEL classification: H10, K20, L51

Keywords: regulation, compliance, regulatory burden, regulatory cost, economic freedom.

Abstract

Regulation is a potent tool with which governments mandate or proscribe action in the private sector. Compliance with regulation is costly, and this paper reviews such compliance costs for the U.S. economy. The paper places regulatory burden estimates in context both relative to those of the primary alternative tool of public policy, government spending/taxing, and relative to regulatory burdens imposed by governments in other countries. U.S. regulatory burden is substantial by any reckoning, probably exceeding half the size of fiscal burden. Yet relative to that of most other countries, U.S. regulatory burden is modest.

U.S. Regulation in Context

Every society, either intentionally or inadvertently, devises mechanisms for coping with the unavoidable fact of resource scarcity. These mechanisms control

* Professor of Economics, Rochester Institute of Technology, Rochester, New York. The author formerly served in the U.S. Office of Management and Budget's Office of Information and Regulatory Affairs, and as a researcher for the U.S. Small Business Administration.

or influence how resources are deployed and, as a consequence, the size and distribution of benefits and costs associated with their deployment.

Three policy systems — regulatory, fiscal (spending and taxing), and monetary — are the primary such mechanisms instituted collectively by governments. Underlying and motivating these mechanisms are deep-seated societal norms — cultural factors embodied in law and tradition. All serve to temper or constrain what otherwise would emerge from individual interactions in decentralized markets, where individuals independently pursue their own interests.

This paper offers an overview of certain basic features of regulation in the United States. Regulation has potent consequences. After all, a single written order, issued as a regulation, can mandate or bar particular actions by an entire population, enforced through a legal system empowered to apply both financial and criminal sanctions. Regulation yields sizable benefits and costs to society, and it also redistributes benefits and costs among individuals. Many but not all of these effects can be documented using indicators of economic and social performance, such as inflation-adjusted GDP, employment, health and well-being measures, along with statistics on the incidence of these effects that reckon with inequality and the well-being of particular subsets of society.

The power of regulation is so substantial that it quite naturally attracts the attention both of those motivated by self interest and those seeking to advance progress of society broadly construed. The U.S. has extensive experience with both types of regulatory advocates and critics.[1]

For many years, for example, owners of certain enterprises in transportation and communications were able to persuade governments to protect them from competitive forces by restricting entry. This adversely affected consumers and slowed technological innovation. Such regulatory barriers to entry continue to burden consumers in other areas such as food and clothing, as U.S. sugar producers, among others, are spared competition from imports.

On the other hand, assisted by application of benefit-cost analysis techniques, advocates of societal risk-reduction measures have been able to muster continuing support for much regulation that clearly generates incremental societal benefits well in excess of costs, netting impressive advances in overall welfare. Reductions in premature fatalities, for example, have resulted from regulatory man-

[1] A substantial stream of scholarship documenting this experience has flowed from a landmark 1971 paper by George Stigler, "The Theory of Economic Regulation," *Bell Journal of Economics and Management Science* 2 (Spring 1971): 3–21.

dates affecting auto design and lead use whose costs are modest relative to the value of the benefits achieved.

It perhaps should not be surprising, given its potency, that regulation is now a tool that routinely is applied by virtually all units of the U.S. central government and by dozens of units within each of the 50 state governments. Moreover, regulations are continuously being added and changed. The government reports that "at any given time, there could be up to 500 rules open for public comment from over 160 federal rulemaking agencies."[2] There is no one body that has oversight responsibility for all regulation affecting U.S. citizens and businesses, although considerable headway has been made in recent years in enabling the public to gain systematic access to key regulatory documents and more effectively participate in the regulatory decision-making process.[3]

Regulation is a more decentralized mechanism than are taxation, spending and monetary policy. There is no automatic or unavoidable total reckoning system for regulation, since no budget constraints apply, and decision-makers face no fundamental tradeoffs when adding regulation. As a result, it is inherently more difficult to gauge and control the extent and growth of regulation — quite apart from its qualitative merit — than is true of government spending and taxation. This creates an imbalanced set of policy incentives for a decision-maker (and for stakeholders seeking to influence that decision-maker).

In general, a particular policy objective can be achieved with equal certainty either when the government pays for it or when the government mandates that a citizen or business pay for it. The latter can be a considerably less visible technique, one that is more difficult to measure. The nature and strength of particular stakeholder groups varies, and this surely invites disproportionate reliance on regulation vs. taxation and spending in some areas, regardless of the societal value of governmental action.

Public understanding of regulatory issues has lagged that of monetary, tax and spending issues, in part because the former is so often relatively invisible ex-

---

[2] "eRulemaking Fact Sheet" available at http://www.regulations.gov/images/eRuleFactSheet.pdf which also states that all government rules open for public comment are being consolidated into a single, user-friendly website, *http://www.regulations.gov*

[3] For example, *http://firstgov.gov/Topics/Reference Shelf/Laws.shtml* and *http://www.reginfo.gov/public* provide easy access to key documents such as (a) the semi-annual *Unified Agenda of Federal Regulatory and Deregulatory Actions*, which identifies regulations under development at over sixty federal agencies and which once per year contains the government's "Regulatory Plan" describing the most important pending regulatory actions, and (b) the *Code of Federal Regulations*, containing all regulations now in effect.

cept to those who directly must respond. However, in recent years, considerable headway has been made in increasing the visibility of the regulatory system. This headway is occurring both at the micro level of individual regulation and at the macro level of aggregate dimensions of regulation.[4] The connection between these two levels is essentially that understanding the macro extent and growth of regulation provides reasonable motivation for work at the micro level. Were the aggregate size of regulation small and declining, there would not be great reason to put substantial effort into improving individual regulations.

The most recent study of U.S. federal regulation at the aggregate level is a report issued in September 2005 by the U.S. Small Business Administration in Washington and authored by W. Mark Crain.[5] This report is the latest in a series begun by SBA in 1995.[6] What Crain's study finds is a regulatory structure that is both massive and growing, and highlights of his results are summarized below.

Crain tracks spending by individuals and businesses to comply with regulations issued by the U.S. central government, covering four types of such regulation: economic, workplace, environmental, and tax compliance. In the "economic" category are controls over, *e.g.*, prices and permits, and international trade restrictions. "Workplace" regulations stem from some twenty-five laws governing wages, worker safety, and worker benefits. "Environmental" regulation addresses risk reduction for environmental hazards. "Tax compliance" is an estimate of the value of time spent complying with federal tax laws.

Combining the burdens of complying with all four types of regulation, Crain concludes:

> ... in 2004, U.S. federal government regulations cost an estimated $1.1 trillion, or 11 percent of national income. This cost burden

[4] The lead role within the U.S. government in improving the accountability of regulators is played by the U.S. Office of Management and Budget, whose Office of Information and Regulatory Affairs annually issues a report to the U.S. Congress on the costs and benefits of federal regulation and works with agencies to improve the efficiency of regulation. See *http://www.whitehouse.gov/omb/inforeg/regpol.html*.
For critical assessment of this office's work, see reports prepared by AEI-Brookings Joint Center for Regulatory Studies at *http://www.aei-brookings.org* and by the Mercatus Center of George Mason University at *http://www.mercatus.org*.

[5] W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," Office of Advocacy, U.S. Small Business Administration, Washington, September 2005 (NTIS #PB2005-108597), *http://www.sba.gov/advo/research*.

[6] See Thomas D. Hopkins, "Profiles of Regulatory Costs," U.S. Small Business Administration, Washington, 1995 (NTIS #PB96-128038); and W. Mark Crain and Thomas D. Hopkins, "The Impact of Regulatory Costs on Small Firms," U.S. Small Business Administration, Washington, 2001 (NTIS #PB2001-107067), *http://www.sba/gov/advo/research*.

> has increased 16 percent in inflation-adjusted dollars relative to the Crain and Hopkins (2001) estimate for 2000. The cost of complying with federal regulations in 2004 was more than half as large as total U.S. federal government receipts, which equaled 18 percent of national income... While federal government receipts as a share of the economy declined between 2000 and 2004, the federal regulatory burden grew. Combined, these two costs of federal government programs in 2004 amounted to 27 percent of national income, which represents a substantial burden on U.S. citizens and businesses.[7]

The distribution of this $1.1 trillion annual regulatory compliance burden across types of regulation:[8]

Economic	52%
Workplace	10%
Environmental	20%
Tax compliance	18%

Regardless of how a regulation or a tax is crafted or whom/what it is intended to burden, ultimately all costs directly or indirectly fall on individuals. For this reason, it is instructive to show what the average household would pay were all regulatory and tax costs to fall equally on every household. Crain makes such calculations, finding:[9]

Year	Federal receipts per household	Total regulatory costs per household	Combined burden per household
2004	$17,187	$10,172	$27,359
2000	$21,050	$ 9,126	$30,176
1995	$17,004	$ 8,437	$25,441

Among the implications of such calculations, two warrant particular note.

First, the sheer scale of regulatory burden is sufficiently large, relative to fiscal burden, that accountability and analytical scrutiny are topics critical for both areas. If efforts to restrain fiscal burdens simply result in increased regulatory burden, little progress should be claimed. That in fact appears to be occurring in the U.S.

[7] Crain, p. 4
[8] *Op.cit.*, p. 29
[9] *Op.cit.*, p. 48

Secondly, a balanced assessment of the merit of either regulation or fiscal action cannot be reached without first gaining a micro-level understanding of the benefits as well as the costs of each particular regulation and tax-financed spending action. This requires reliance on benefit-cost analysis. Undertaking such analysis is itself not without cost, but it is justified by findings such as those of Crain's about the large absolute size of burdens.

The U.S. Office of Management and Budget is making considerable headway in leading a cross-government effort to apply benefit-cost analysis in regulatory proceedings (see footnote 3 above). The flow of regulation, however, has outpaced the analytical resources available for this purpose. For example, during the past 25 years, over 100,000 new federal regulations have been adopted, and over 1,000 of these have imposed compliance costs in excess of $100 million each.[10] In most of these cases, no analysis has yet been completed of the extent to which these regulations are efficiently achieving their intended objectives. The most that can be said is that heightened analytical scrutiny is now being given to newly adopted regulation, increasing the odds that fewer inefficient new measures are being added each year.

A useful international context for understanding Crain's findings is provided by another report issued in September 2005: the World Bank's *Doing Business in 2006*, the third in its annual series.[11] While using a quite different approach to measurement, encompassing indicators (including certain taxes) beyond cost of regulatory compliance, the World Bank's study shows clearly that the aggregate regulatory burden now existing in the United States, however large it may otherwise appear, is in fact modest compared to the regulatory burdens imposed in most of the rest of the world.

The World Bank concludes that regulatory constraints on the ease of doing business are less burdensome in the United States than in all but two other nations. Only New Zealand and Singapore have more business-friendly regulation. The World Bank finds that the least burdensome ten regulatory systems are[12]:

1. New Zealand

[10] As reported by John D. Graham, Administrator, Office of Information and Regulatory Affairs, U.S. Office of Management and Budget at a symposium on the Regulatory Flexibility Act held by the U.S. Small Business Administration, Washington, DC, September 20, 2005.
[11] The International Bank for Reconstruction and Development/The World Bank, *Doing Business in 2006: Creating Jobs*, Washington, September 2005 (ISBN 0-8213-5749-2). Also see its *Doing Business in 2005: Removing Obstacles to Growth* and *Doing Business in 2004: Understanding Regulation* http://www.worldbank.org/publications
[12] *Doing Business in 2006*, Table 1.2.

2. Singapore
3. United States
4. Canada
5. Norway
6. Australia
7. Hong Kong, China
8. Denmark
9. United Kingdom
10. Japan

In its more detailed summary table, "Benchmarking Business Regulations," the World Bank ranks the Russian Federation as number 79 among the 155 countries included in its study, with the Democratic Republic of the Congo ranked most burdensome, at number 155.

Advocates of regulatory relief sometimes are portrayed as those who favor a race to the bottom that would wipe out safeguards protecting society from adverse consequences of untrammeled business competition. To the contrary, the World Bank points out: "Having a high ranking on the ease of doing business does not mean that a country has no regulation... All the top ranking countries regulate businesses, but they do so in less costly and burdensome ways..." With particular reference to the Nordic countries listed above, the World Bank states "they have simple regulations that allow businesses to be productive, and focus intervention where it counts — protecting property rights and providing social services."[13] It perhaps is worthy of note that the World Bank does not include the U.S. in this subset of countries having "simple regulations."

Other perspectives on how countries compare on the economic freedom dimension are provided by annual rankings published separately by The Fraser Institute and by The Heritage Foundation (in collaboration with *The Wall Street Journal*).[14] In the latest Fraser report, which also happens to have been released in September 2005, three of the top ten World Bank ranked countries — Norway, Denmark and Japan — do not make the top ten, which instead includes Switzerland and Ireland. Four World Bank "winners" — the U.S., Canada, Norway and Japan — fail to place on the top ten Heritage/*Wall Street Journal* list, issued

[13] *Op.cit.*, p. 4

[14] James Gwartney and Robert Lawson, *Economic Freedom of the World: 2005 Annual Report*, The Fraser Institute, Vancouver, BC, Canada at http://freetheworld.com/ and "Index of Economic Freedom," The Heritage Foundation, Washington, DC at http://www.heritage.org/index.

January 2005, where the U.S. ranks number 12; their places are taken by Luxembourg, Estonia, Ireland, and Iceland.

All three independent rankings agree on the five countries that can be considered least burdened by constraints on economic freedom: New Zealand, Singapore, Australia, Hong Kong/China, and the United Kingdom.

In any event, and by all reckonings, regulation is a potent and extensively used tool of public policy. In the U.S., regulation is the subject of continuous debate and conflicting intentions. Without question, regulation generates substantial benefits as well as substantial costs. The challenge remains of better ensuring that decisions about retaining and revising existing regulation, and about adding new regulation, reflect objective assessment of incremental societal net benefits. The absolute size of the burden indicates that society could gain substantially from better informed decisions, notwithstanding the fact that the U.S. regulatory situation appears to be in better shape than that of most other nations.